

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOHN A. ARETAKIS,

Plaintiff,

-against-

ROBERT DURIVAGE, TIMOTHY NUGENT, TOWN OF
NORTH GREENBUSH AND ROBERT D. WELLS,

Defendants.

**AFFIRMATION IN
SUPPORT OF MOTION
FOR EXTENSION OF
TIME BY DEFENDANT
ROBERT D. WELLS**

**Civil Action No. 07-Civ-5444
(Hon. Shira A. Scheindlin)**

MICHAEL L. COSTELLO, being an attorney duly admitted to practice before this Court,
affirms and states the following under penalty of perjury:

1. Affiant is a partner at the law firm of Tobin and Dempf, LLP and an attorney admitted to practice before this court and the courts of the State of New York, and, as such, submits this affirmation under penalty of perjury.
2. Affiant is counsel to Defendant Robert Wells in this action, and is familiar with the pleadings and proceedings had herein.
3. Affiant makes this affirmation in support of Defendant Wells' motion for an extension of time to answer or otherwise plead.
4. The plaintiff's initial complaint in this matter was filed on June 8, 2007.
5. After this Court ordered the plaintiff to serve a summons and a complaint on the defendant no later than October 12, 2007, and threatened dismissal, the plaintiff filed an amended complaint; the plaintiff served that amended complaint, along with a summons, upon Defendant Wells on October 12, 2007, via substituted service on his son.

6. The amended complaint in this matter asserts various claims under the First, Fourth, Fifth, and Fourteenth Amendments to the United States Constitution, as well as claims brought under 42 U.S.C. §§ 1983 and 1988 and various pendent claims.
7. On October 30, 2007, pursuant to Individual Practice Rule III (A), on behalf of Defendant Wells your affiant forwarded an exchange letter to plaintiff pro se addressing proposed motions to change venue and dismiss the amended complaint and requesting an extension of time within which to answer or otherwise move as against the amended complaint.
8. The plaintiff pro se has not consented to the extension request.
9. On October 30, 2007, your affiant filed, via ECF, a request for a pre-motion conference pursuant to the Court's Individual Practice Rule III(A) addressing proposed motions to change venue and dismissal of the amended complaint.
10. F.R.C.P. 6(b)(1) provides, in pertinent part, as follows: "When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if request therefore is made before the expiration of the period originally prescribed or as extended by a previous order."
11. Pursuant to F.R.C.P. 12, the plaintiff's deadline to answer or otherwise move in connection with this matter is November 1, 2007; thus, the instant motion for an extension of time to answer or otherwise move as against the amended complaint is timely.

Dated: November 1, 2007

/s/ Michael L. Costello

Michael L. Costello

Bar Roll No. (MC 5378)